

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                           |  |                                    |                                 |
|--|--|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Jenzo Duque                     | Team:<br>Squad #8                            | CCRB Case #:<br>201806458 | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |  |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Thursday, 07/26/2018 8:32 PM | Location of Incident:<br>front of § 87(2)(b) | Precinct:<br>42           | 18 Mo. SOL<br>1/26/2020                                | EO SOL<br>1/26/2020                |                                 |
| Date/Time CV Reported                            | CV Reported At:<br>IAB                       | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 08/08/2018 11:08 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |

| Subject Officer(s)  | Shield | TaxID  | Command |
|---------------------|--------|--------|---------|
| 1. SGT Victor Velez | 4643   | 943924 | 042 PCT |
| 2. POF Merita Hoxha | 11713  | 955988 | 042 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------|-----------|--------|----------|
| 1. POF Chris Aybar | 15039     | 955736 | 042 PCT  |
| 2. POM Sean Casey  | 30698     | 952551 | 042 PCT  |

| Officer(s)            | Allegation  | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.SGT Victor Velez    | Abuse: Sgt. Victor Velez stopped § 87(2)(b)           | § 87(2)(b)                  |
| B.SGT Victor Velez    | Abuse: Sgt. Victor Velez questioned § 87(2)(b)        | § 87(2)(b)                  |
| C.POF Merita Hoxha    | Abuse: PO Merita Hoxha questioned § 87(2)(b)          | § 87(2)(b)                  |
| D.POF Merita Hoxha    | Abuse: Police Officer Merita Hoxha frisked § 87(2)(b) | § 87(2)(b)                  |
| E.POF Merita Hoxha    | Abuse: PO Merita Hoxha searched § 87(2)(b)            | § 87(2)(b)                  |
| § 87(4-b), § 87(2)(g) | § 87(2)(b)  | § 87(2)(b)                  |
| § 87(4-b), § 87(2)(g) | § 87(2)(b) search.                                    | § 87(2)(b)                  |

### Case Summary

Sergeant Michael Urena of the 42 Precinct filed this complaint with IAB and on behalf of Jeannia § 87(2)(b) under IAB Log#2018-30272, on July 27, 2018. IAB referred the complaint to the CCRB on August 8, 2018.

On July 26, 2018, at approximately 8:32 p.m., in front of § 87(2)(b) in the Bronx, Sgt. Victor Velez of the 42<sup>nd</sup> Precinct stopped § 87(2)(b) for jaywalking (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Merita Hoxha of the 42<sup>nd</sup> Precinct and Sgt. Velez then asked § 87(2)(b) if he had anything on him the officers should know about (**Allegation B: Abuse of Authority, § 87(2)(g)**; **Allegation C: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) stated he had nothing on his person and PO Hoxha asked for his consent to check. § 87(2)(b) consented to the officer's request and PO Hoxha then frisked § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). PO Hoxha felt an object in § 87(2)(b)'s pant leg and § 87(2)(b) identified it as a blade. PO Hoxha then removed the blade from § 87(2)(b)'s pant leg (**Allegation E: Abuse of Authority, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

There were six body-worn camera videos available for this incident. Two videos were from PO Hoxha, 03:41 long (Board Review 01) and 02:18 long (Board Review 02). One video was from Sgt. Velez and 03:50 long (Board Review 03). Two videos were from PO Chris Aybar of the 42<sup>nd</sup> Precinct, 03:52 long (Board Review 04) and 02:28 long (Board review 05). One video was from PO Sean Casey of the 42<sup>nd</sup> Precinct, 01:39 long (Board Review 06). § 87(2)(b) was not arrest or issued a summons as a result of this incident.

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Sergeant Victor Velez stopped § 87(2)(b)**

It is undisputed that on July 26, 2018, at approximately 8:32 p.m., in front of § 87(2)(b) in the Bronx, Sgt. Velez stopped § 87(2)(b). According to § 87(2)(b)'s sworn statement (Board Review 07), § 87(2)(b) observed an unmarked sedan drive northbound on Southern Boulevard as he crossed the street from his cousin's residence to his own residence. § 87(2)(b) acknowledged jaywalking at that point in time. The unmarked sedan then drove southbound on Southern Boulevard, stopped beside § 87(2)(b) and Sgt. Velez, PO Aybar, and PO Hoxha exited it. Sgt. Velez and PO Hoxha commanded § 87(2)(b) to stop and he complied.

In Sgt. Velez's statement to the CCRB (Board Review 08), Sgt. Velez, PO Aybar, PO Hoxha, and PO Casey drove an unmarked sedan when they observed § 87(2)(b) jaywalking from the west side to the east side of Southern Boulevard. Sgt. Velez did not recall which officer observed § 87(2)(b) jaywalking. The officers had no reason for stopping § 87(2)(b) other than his jaywalking. There was no discussion between the officers regarding whether to arrest § 87(2)(b) to issue him a summons, or how to proceed prior to stopping him. The officers pulled over and attempted to stop § 87(2)(b) but § 87(2)(b) crossed the street once more. The officers turned the vehicle around, exited it, and then stopped § 87(2)(b).

In PO Hoxha's statement to the CCRB (Board Review 09), PO Hoxha sat in the rear passenger seat of the sedan behind the driver, but did not recall where the other officers were positioned in the vehicle. The sedan was in motion and approximately two-car lengths away when

the officers observed § 87(2)(b) jaywalking. Sgt. Velez did not state the officers should act. The driver stopped the vehicle and PO Hoxha exited it while telling § 87(2)(b) to stop.

In PO Aybar's statement to the CCRB (Board Review 10), PO Aybar sat in the rear of passenger seat of the sedan and PO Casey drove the sedan. PO Aybar could not recall where she sat specifically, nor where Sgt. Velez and PO Hoxha were positioned in the vehicle. When the officers stopped § 87(2)(b) they explained he had been stopped for jaywalking.

N.Y. Veh. & Traf. Law § 1150 (Consol.) (Board Review 14), states, "Pedestrians shall be subject to traffic-control signals."

People v. De Bour, 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.E.2d 562 (1976) (Board Review 11) ruled that if an officer "entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor, the Criminal Procedure Law authorizes a forcible stop and detention of that person."

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Sergeant Victor Velez questioned § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Merita Hoxha questioned § 87(2)(b)**

It is undisputed that after Sgt. Velez stopped § 87(2)(b) Sgt. Velez and PO Hoxha questioned § 87(2)(b)

According to § 87(2)(b)'s sworn statement (Board Review 07), PO Hoxha asked § 87(2)(b) if he was hiding anything. Sgt. Velez then stated § 87(2)(b) seemed nervous and asked § 87(2)(b) if he had anything on his person he should not have.

In Sgt. Velez's statement to the CCRB (Board Review 08), Sgt. Velez observed § 87(2)(b) behaving in a nervous manner. § 87(2)(b) was short of breath, refused to make eye contact, and reached inside his front pants pockets. However, upon further questioning, Sgt. Velez clarified that § 87(2)(b) did not place his hands into his pockets, but rather attempted to do so. Sgt. Velez and PO Hoxha ordered § 87(2)(b) not to reach into his pockets and § 87(2)(b) complied. PO Hoxha asked § 87(2)(b) if he had any weapons on him and § 87(2)(b) Rodrigues stated he did not. Sgt. Velez believed § 87(2)(b) was armed because of his nervous behavior and attempt to place his hands into his pockets. No other information led Sgt. Velez to believe § 87(2)(b) was armed.

In PO Hoxha's statement to the CCRB (Board Review 09), PO Hoxha approached § 87(2)(b) and requested his identification, which he did not provide. PO Hoxha asked § 87(2)(b) why he was nervous and if he had any weapons or drugs on his person. § 87(2)(b) did not respond to PO Hoxha's questions. PO Hoxha did not observe any bulges on any part of § 87(2)(b)'s body. PO Hoxha did not observe anything about § 87(2)(b) that led her to conclude he was carrying a weapon on his person, other than his nervous behavior

and refusal to answer her questions. PO Hoxha did not suspect § 87(2)(b) was armed nor did anything about him cause her to fear for her safety.

In PO Aybar's statement to the CCRB (Board Review 10), PO Aybar suspected § 87(2)(b) of possessing a weapon because he behaved nervously and would not stay still. However, upon further questioning, PO Aybar clarified that § 87(2)(b) did not attempt to leave the scene. PO Hoxha asked § 87(2)(b) if he had any weapons and § 87(2)(b) stated he did not. Other than his nervous behavior, nothing else about § 87(2)(b) led PO Aybar to conclude he was carrying a weapon.



Sgt. Velez.mp4

In Sgt. Velez's body-worn camera (Board Review 03), Sgt. Velez and PO Hoxha commanded § 87(2)(b) not to place his hands inside his pockets. PO Hoxha then grabbed § 87(2)(b)'s left wrist. PO Hoxha asked § 87(2)(b) "Do you have anything on you we should know about?" § 87(2)(b) responded, "No, I do not have nothing." PO Hoxha then asked, "Why are you so nervous?" § 87(2)(b) responded, "Because y'all scaring me and I'm trying to go home. And I got curfew." Both Sgt. Velez and PO Hoxha then asked § 87(2)(b) if he had anything on him the officers should know about or that he should not have.

Patrol Guide Procedure 212-11 subsection 16-B (Board Review 12) regarding Investigative Encounters states that during a legitimate stop officers, "May ask pointed questions related to the reason for the stop."

New York v. Hollman, 79 N.Y.2d 181, 581 N.Y.S.2d 619, 590 N.E.2d 204 (1992) (Board Review 13) ruled that once "an officer's questions become extended and accusatory and the officer's inquiry focuses on the possible criminality of the person approached, this is not a simple request for information. Where the person approached from the content of the officer's questions might reasonably believe the he or she is suspected of some wrongdoing, the officer is no longer merely asking for information. The encounter has become a common-law inquiry that must be supported by founded suspicion that criminality is afoot."

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D): Police Officer Merita Hoxha frisked § 87(2)(b)**

It is undisputed that after questioning § 87(2)(b) PO Hoxha asked § 87(2)(b) if she could check him. § 87(2)(b) gave PO Hoxha his consent, and PO Hoxha then frisked § 87(2)(b).

According to § 87(2)(b)'s sworn statement (Board Review 07), Sgt. Velez, PO Hoxha, and PO Aybar positioned themselves in front of § 87(2)(b) while PO Casey stood beside the open driver's door of their police vehicle positioned behind him. PO Hoxha asked § 87(2)(b) if she could search him and he consented. PO Hoxha then patted down § 87(2)(b)'s front-pants pockets, back-pants pockets, and both his legs from the knee down to the ankle. No other officer patted down § 87(2)(b) however, PO Hoxha grabbed and held his right wrist for the duration of the stop.

In PO Hoxha's statement to the CCRB (Board Review 08), PO Hoxha asked § 87(2)(b) if she could pat him down for weapons and § 87(2)(b) consented by stating, "Yes, you can." PO Hoxha then patted down § 87(2)(b) in the waist area, over his pockets, and his pant legs. When asked why she patted down § 87(2)(b) in those areas of his person, PO Hoxha stated she only patted him down where weapons were likely to be hidden. PO Hoxha did not observe anything about § 87(2)(b) that led her to conclude he was carrying a weapon on his person, other than his nervous behavior and refusal to answer her questions. PO Hoxha did not suspect § 87(2)(b) was armed nor did anything about him cause her to fear for her safety.

Sgt. Velez provided a consistent statement (Board Review 09). PO Hoxha asked § 87(2)(b) if she could pat him down and § 87(2)(b) consented, though Sgt. Velez did not recall what § 87(2)(b) stated specifically when giving consent.

PO Aybar provided a consistent statement (Board Review 10). PO Hoxha asked § 87(2)(b) if she could pat him down and § 87(2)(b) stated, "Go ahead," in response.



PO Hoxha Clip 1.mp4

In PO Hoxha's body-worn camera (Board Review 01), § 87(2)(b) stated, "Because y'all scaring me and I'm trying to go home. And I got curfew," in response to PO Hoxha's asking him why he was so nervous. Both Sgt. Velez and PO Hoxha then asked § 87(2)(b) if he had anything on him the officers should know about or that he should not have. PO Hoxha then asked § 87(2)(b) "Is it alright if we just check?" § 87(2)(b) responded, "Go ahead, but I don't got nothing on me."



Sgt. Velez.mp4

In Sgt. Velez's body-worn camera (Board Review 03), Sgt. Velez and PO Hoxha commanded § 87(2)(b) not to place his hands inside his pockets. PO Hoxha then grabbed § 87(2)(b)'s left wrist.

Patrol Guide Procedure 212-11 subsections 10-13 (Board Review 12) regarding Investigative Encounters states that during a common law right of inquiry officers, "May seek information and ask questions, included pointed and accusatory questions. The person may refuse to answer questions and is free to leave. You may request consent to search; the consent must be voluntarily given."

New York v. Hollman, 79 N.Y.2d 181, 581 N.Y.S.2d 619, 590 N.E.2d 204 (1992) (Board Review 13), ruled that “because the defendant’s consent was a product of the improper police inquiry, the Appellate Division was in error when it found that the defendant had in fact consented to the search of his bag.”

§ 87(2)(g)

§ 87(2)(g)

**Allegation E: Police Officer Merita Hoxha searched** § 87(2)(b)

It is undisputed that after frisking § 87(2)(b) PO Hoxha felt an object in his left pant leg and asked him to identify it. § 87(2)(b) stated the object was a blade and PO Hoxha then removed it from his person.

According to § 87(2)(b)’s sworn statement (Board Review 07), PO Hoxha entered all of his pockets after patting him down, but did not recover anything from his person.

In PO Hoxha’s statement to the CCRB (Board Review 08), PO Hoxha did not enter any of § 87(2)(b)’s pockets. There were no specific areas on § 87(2)(b)’s body where PO Hoxha felt that there might be a weapon. PO Hoxha felt the object in § 87(2)(b)’s left pant leg when she frisked him, and she recovered it. PO Hoxha could not describe the blade by color or dimension. PO Hoxha determined the blade to be a gravity knife by testing it. When asked how a gravity knife is classified, PO Hoxha stated it is knife opened by the force of gravity and the flicking of the wrist.

In Sgt. Velez’s statement to the CCRB (Board Review 09), PO Hoxha asked § 87(2)(b) what the object she felt in his left pant leg was and § 87(2)(b) identified the object as a blade. PO Hoxha then inched the blade down § 87(2)(b)’s pant leg and pulled it out from his ankle. Sgt. Velez did not recall the dimensions of the blade.

In PO Aybar’s statement to the CCRB (Board Review 10), the object was falling out of § 87(2)(b)’s pant leg, but no part of it was exposed. PO Aybar did not recall what the blade looked like nor could she describe its dimensions.



PO Hoxha Clip 2.mp4

In PO Hoxha's body-worn camera footage (Board Review 01), PO Hoxha patted down § 87(2)(b)'s left leg and stopped near his thigh. PO Hoxha asked § 87(2)(b) "What is this?" and § 87(2)(b) responded, "That's my cousin's blade." PO Hoxha then slid the blade down § 87(2)(b)'s pant leg and pulled it from his ankle.

New York v. Hollman, 79 N.Y.2d 181, 581 N.Y.S.2d 619, 590 N.E.2d 204 (1992) (Board Review 13), ruled that officer "Canale crossed the line, however, when he asked to search the defendant's bag. The defendant's behavior, while it may have provided the officer with adequate basis for an approach and for a few general, nonaccusatory questions, was certainly not so suspicious as to warrant the further intrusion of a request to rummage through the defendant's luggage. Because the defendant's consent was a product of the improper police inquiry, the Appellate Division was in error when it found that the defendant had in fact consented to the search of his bag."

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

## Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15)
- Sgt. Velez has been a member of service for 11 years and has been a subject in three complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Hoxha has been a member of service for four years and has been a subject in two complaints and three allegations, none of which were substantiated. § 87(2)(g)

## Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of December 3, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim request in regards to this complaint (Board Review 16).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 17).

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Squad Leader: \_\_\_\_\_

| Signature | Print Title & Name | Date |
|-----------|--------------------|------|
|-----------|--------------------|------|

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_



